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SIPDIS

EUR (JONES), EUR/SCE (FOOKS, STINCHCOMB), INL (CARROLL);
NSC FOR HELGERSON; OSD FOR BEIN; DOJ FOR OPDAT (ALEXANDRE)

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TAGS: PGOV PREL KCRM KJUS BK

SUBJECT: BOSNIA - COURT REJECTS EFFORT TO GUT STATE COURT'S
JURISDICTION ON ORGANIZED CRIME AND CORRUPTION

REF: 08 SARAJEVO 1628

Classified By: Michael J. Murphy for Reasons 1.4 (B) and (D)

Court Strikes Down Serb Challenge to State Court

¶11. (U) During its March 28 session, the BiH Constitutional Court rejected a case brought by BiH House of Representatives Deputy Speaker Milorad Zivkovic and twelve other deputies from Republika Srpska (RS) Prime Minister Milorad Dodik's party, the Alliance of Social Democrats (SNSD), that had challenged Article 13 in the Law on the State Court. Article 13 lays out the types of cases over which the State Court has jurisdiction, and it provides the State Prosecutor's Office with one basis for its jurisdictional claims over the corruption allegations against Dodik. The Court has not yet published its decision, though it is expected to do so by the end of the month. (Note: The Constitutional Court often keeps its decisions close hold, releasing them weeks or months after making them. End Note). The Office of the High Representative and the Organization for Security and Cooperation in Europe (OSCE) had been asked by the Court to provide their expert opinion on the matter prior to its decision.

¶12. (U) Deputy Speaker Zivkovic was strident in his public response to the Constitutional Court's ruling. According to press reports, Zivkovic declared that the court's decision was a "silent way" to transfer competencies from the entities to the state. He also alleged that the Court's decision and behavior had been unduly influenced by its foreign judges, who he said were engaged in a "legal occupation" of the Court. Zivkovic went on to say that RS interests in the Constitutional Court can not be protected because of outvoting of Serb representatives, the role of the international judges, and pressure by the international community and the Federation press. Zivkovic subsequently explained that he was not calling on Serb representatives to withdraw from the Court, but rather re-examine their role and work there. BiH House of People's Deputy Speaker and SNSD party member Dusanka Mekic echoed Zivkovic's criticism, saying that the Court's decision was an "attempt to suck out all basic functions from the RS and leave only an empty shell of the legal system."

Comment

¶13. (C) The BiH Constitutional Court's ruling is a welcome development. Had the Court declared Article 13

unconstitutional, it would have had a profoundly negative impact on state-level law enforcement and judicial institutions' ability to combat organized crime and corruption. This has been -- and remains -- a fundamental goal of U.S. rule of law programs in Bosnia. Despite the state's victory, we expect Dodik and his allies to continue their attacks on the State Prosecutor's Office and the State Court and to keep filing cases before the Constitutional Court challenging the authority of state-level judicial institutions. Zivkovic has already vowed that he would do so.

ENGLISH